Judgment Reserved

]IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Appeal No. 860 of 2001
(Old No. 2583 of 1987)

1. Suleman, S/o Khan Mohd.
2. Fida Husain, S/o Jamshed
Both residents of Pathari
P.S. Kankhal, District Saharanpur …….Appellants

Versus

State …….Respondent.

Shri Rajesh Sharma, learned Amicus Curiae for the appellants.
Shri G.S. Sandhu, Learned A.G.A. for the State.

Hon'ble Prafulla C. Pant, J.

This appeal, preferred under Section 374 (2) of Code of Criminal Procedure, 1973 (for brevity herein after referred as Cr.P.C.), is directed against the judgment and order dated 29.07.1987, passed by learned Additional Sessions Judge, Dehradun, in Sessions Trial No. 75 of 1985, whereby appellants Suleman and Fida Husain along with one Madan Mohan were convicted under Section 395 and 412 of Indian Penal Code, 1860 (for brevity herein after referred as I.P.C.), and each one of them is sentenced to undergo rigorous imprisonment for a period of three years and to pay fine of Rs. 1,000/- (under Section 395 I.P.C.) and rigorous imprisonment for a period of one year (under Section 412 I.P.C.). In default of payment of fine, the defaulter was directed to undergo rigorous imprisonment for a further period of six months.

2. Heard learned counsel for the parties and perused the record.

3. Prosecution story, in brief, is that in the intervening night of 23rd/24th of February, 1985 , in Village Luxmipur, within the jurisdiction of P.S. Kotwali, District Dehradun, P.W. 3 Bal Kishan was in his house along with his wife Smt. Deepa. In another room, his mother was sleeping with his younger brother P.W. 2 Dinesh Kumar. There was light of electricity inside the house. At about 12:30 in the midnight, the family of Bal Kishan woke up as some 5-6 miscreants, armed with lathis and dandaas, broke open the door of their house. After entering inside the house, they started looting the property. Complainant P.W. 3 Bal Kishan could open the back door and raised alarm. On this, his neighbours in the village, came out of their houses to help the complainant but the miscreants started bursting the crackers to given an impression of shots of fire arm and escaped towards river side. The dacoits on that day also looted house of Dal Bahadur, Vir Bahadur and Chavi Lal. The First Information Report of the incident was lodged with the reporting out post Vasant Vihar, P.S. Kotwali, at about 6:20 A.M. on 24.02.1985. The distance between the place of incident and the reporting chowki was 10 kms. In the First Information Report, details of all articles looted were also given. The investigation was taken up by Shri B.S. Panwar. During investigation, Suleman, Fida Husain (both appellants) and one Madan and Tammana, were arrested. The looted articles were recovered from them. A gold chain, a wrist watch and a part of cash looted were recovered from appellants. The accused were put

to the identification in the test identification parade and were identified by the witnesses. Charge sheet was filed against the accused persons. After the case was committed to Court of Sessions charge was framed against appellants and third accused relating to offences punishable under Section 395 read with Section 397 I.P.C. and one under Section 412 I.P.C. Accused/appellants, pleaded not guilty and claimed to be tried. On this prosecution got examined P.W. 1 Kaushalya Devi (eye witness), P.W. 2 Dinesh Kumar (eye witness), P.W. 3 Bal Kishan (eye witness), P.W. 4 Ram Prasad,. P.W. 5 Dhani Devi, P.W. 6 Smt. Kesari Devi (injured by the dactoits), P.W. 7 Dumber Bahadur and P.W. 8 Prem Lal. The evidence, appears to have been put to the accused persons, under Section 313 Cr.P.C., who alleged the same to be false. From the record, it appears that two accused persons absconded and their case was separated and case of Suleman, Fida Husain and one Madan, proceed further. After hearing the parties, all the three accused persons were found guilty of offence punishable under Section 395 and 412 I.P.C. And after hearing them on sentence, each of the convict was sentenced to undergo rigorous imprisonment for a period of three years and to pay fine of Rs. 1,000/- (under Section 395 I.P.C.) and each of the convict was directed to undergo imprisonment for a period of one year (under Section 412 I.P.C.). In default of payment of fine, the defaulter, if any, was directed to undergo rigorous imprisonment for a further period of six months. This appeal was filed against said judgment and order dated 29.07.1987, before Allahabad

High Court from where it has been received by transfer to this Court, under Section 35 of U.P. Reorganisation Act, 2000, for its disposal.

4. Learned Amicus Curiae, on behalf of the appellants conceded that there is little to argue on the point of conviction but prayed for reduction in sentence, awarded against the appellants. I have gone through the statements of the witnesses, recorded by the trial court and the documentary evidence including the test identification memo (Ext. A-27). In view of the evidence of the injured and the eye witnesses, and the fact that the property looted were recovered from the appellants, this Court is of the view that the trial court has rightly found appellants guilty of evidence punishable under section 395 and 412 I.P.C, as the prosecution has been successful in proving the charge against the accused/appellants.

5. However, on the point of sentence, while examining the report and hearing the parties in the case, it came to light to this Court that each one of the appellants Suleman and Fida Husain, have already undergone imprisonment for a period of two years and eleven months. Sending them to jail for only a period of one month after nineteen years would not serve any purpose. Therefore, in the interest of justice, this Court is of the opinion that the sentence awarded against the accused/appellants is reduced to rigorous imprisonment for a period of 2 ½ years (instead of three years) under Section 395 I.P.C. and in default of payment of fine of

Rs. 1,000/- the period required to undergo is reduced to three months (instead of six months). Since both the sentences are directed to run concurrently by the trial court relating to sentence awarded under Section 395 and 412 I.P.C., the sentences awarded under both the Sections stand served out. Accordingly, the appeal is disposed of with the direction that the impugned judgment and order dated 29.07.1987, passed by the trial court, on the point of conviction is maintained, and on the point of sentence is modified, as observed above. Since the appellants have already served out the sentence, the need not to surrender. Their bail bonds are cancelled and sureties are discharged.

Dt. 30.10.2006 **(Prafulla C. Pant, J.)**

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